

MERCATUS CENTER
GEORGE MASON UNIVERSITY

**Comments to the Advisory Group on Outsourcing,
Privatization & Risk Management**

From Hon. Maurice McTigue

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Privatization:

A process that transfers ownership of assets from the public sector to the private sector normally through sale, but sometimes through negotiation or restricted access sale. A number of recent innovations have seen this process evolve to more of a long term lease 20, 30 or 100 years after which the assets revert to public ownership. (eg. Roads, radio spectrum, forests, prisons, banks, insurance and other businesses.)

Outsourcing:

A process that subjects services that were previously delivered inside government organizations to competition from private sector bidders. Normally done by contract, which may be for a single year or multiple years. An innovation in this process is allowing the public sector organization to bid for those services as well, but before being allowed to bid, the public sector organization must set up a separate commercial profit center. This profit center would be required to conform to all of the rules and regulations that its private sector competitor is required to meet. (eg. Supply of consumables, cleaning services, repairs and maintenance, professional services, accounting, legal services, health services, human resources management, etc)

Public-Private Partnerships:

A process that attracts private sector capital to provide facilities, often buildings, but also roads, bridges, recreational areas, and parks. These sometimes are combined operations where the private sector provides the residential facility and management of those facilities and the government provides technical or governmental services. For example: prisons, where government would provide custodial staff, and the private sector would provide facilities. Hospitals, where the private sector would provide buildings, plant, maintenance, cafeteria, and the state would provide health services. (nurses, doctors, psychiatrists)

Internal Markets:

This is a process where one government department may supply services to another government department under a contractual arrangement. For this process to work, it needs to be strictly business-based in its operation with full costing of services by the delivering organization and specification of quantity, quality and timeliness by the purchasing organization. The contracts need to be professionally written, professionally managed and enforceable in a court of law, if necessary.

State Owned Enterprises:

This process is designed to bring private sector managerial skills and efficiency to operations that are destined to stay in government ownership. This structure is often used for activities that are natural monopolies. The enterprise is structured in an identical way to a private sector corporation, is managed by a private sector board of directors chosen for their competency, who serve fixed terms on the board. The government's role is that of a shareholder and the administration and legislature are unable to interfere in the day to day operation of the corporation. The corporation should pay taxes, pay dividends to its shareholders, and be required by law to be profitable. The government may have an ongoing business relationship with this organization in which case it would buy goods and services by contract. If the government requires the organization to undertake any activity that is seen by the board of directors as

uneconomic, then the government must pay a fee to the corporation equal to the difference between the rate of return on that activity and what would be an economic rate of return. (eg. airports, shipping ports, water systems, irrigation schemes, navigations services, research organizations, etc)

Competitive Contracting:

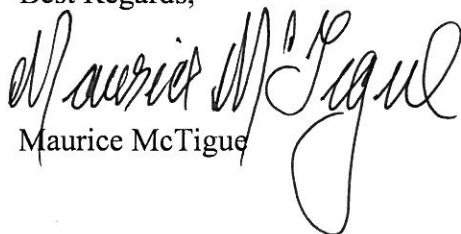
This is a process where the government may purchase a variety of different services by letting competitive bids for contracts that specify the service to be delivered. These may be as varied as vehicle safety inspections, the care of parks, repairing potholes, the provision of technology or technical equipment, the delivery of meals, the cleaning of buildings, the provision of vehicles, the repairs and maintenance of plant, etc.

Comments:

For these processes and procedures to be successful, there are a number of principles that must be adhered to:

- The process must be open, transparent, fair and the contracts enforceable.
- The procedures around contracting require high levels of skill and credibility. This includes the writing of contracts, particularly the specification of service to be delivered, and the managing of the contract to ensure that the goods and services, specified in the contract are delivered, in time, on cost and with acceptable levels of public satisfaction.
- The process of privatization needs to be designed so that it is totally untainted by any hints of preference, privilege, or corruption. It must be designed to maximize the benefit to the taxpayer and the results of the transaction must be public.
- The process in every case should be designed so that those in political office are kept informed but at arms length from the transactions, so that accusations of preferential treatment or political patronage can be eliminated. This is best achieved by a process that appoints a private sector sale manager.
- As much as possible, the special requirements that the government has in each sale should be outlined in the bidding documents and then should be enshrined in the final sale and purchase agreement. This means that disputes are subject to contract law which provides much greater certainty than the use of administrative law. Eg: it is possible to write into a final sale and purchase agreement, the environmental outcomes that the government wishes to protect, the quality of service that the government requires when dealing with citizens, the compliance with laws, bylaws and administrative orders and the geographical availability of services can all be included in this document.

Best Regards,


Maurice McTigue